

IN THE COURT OF APPEALS OF MARYLAND

LINDA H. LAMONE,	*	SEPTEMBER TERM 2017
Appellant,	*	No. 85
v.	*	
	*	
NANCY LEWIN, et al.,	*	
Appellees.	*	

* * * * *

MOTION TO RECALL MANDATE AND FOR RECONSIDERATON

Nancy Lewin, Elinor Mitchell and Christopher Ervin, Appellees, move pursuant to Maryland Code, Courts & Judicial Proceedings § 6-408 and Maryland Rule 8-605 that the Court recall its Mandate dated May 2, 2018, in the above-captioned appeal, and reconsider its Per Curiam Order dated May 2, 2018. As grounds for their Motion, the Appellees state:

1. On May 2, 2018, this Court heard on an expedited basis the above-captioned appeal, issued a Per Curiam Order less than three hours after the appeal was heard, and issued its Mandate forthwith.

2. Among the arguments made by Appellant, the State Administrator, Maryland State Board of Elections (“State Board”), was that the relief sought by the Appellees and granted by the Circuit Court’s preliminary injunction – the removal

of the name of Nathaniel Oaks from election ballots to be distributed in Legislative District 41 for the June 26, 2018, Democratic Party Primary Election – would be difficult, if not impossible, to implement.

3. On May 10, 2018, Kevin Kamenetz, a candidate for the Democratic Party nomination for Governor of Maryland, died.

4. As noted in the Appellees' Reply Brief filed in this appeal, in the event of the death of a candidate for Governor, Maryland Code, Election Law §5-904, requires that the State Board include the name of the successor candidate for Governor on the ballot unless the candidate for Governor dies less than ten days before the Primary Election.

5. In light of Mr. Kamenetz's death, all ballots for the June 26, 2018, Democratic Party Primary Election, including the two ballots for Legislative District 41, will have to be changed and reprinted if a successor candidate is designated by Valerie Ervin, the candidate for Lieutenant Governor who was running with Mr. Kamenetz.

6. To the extent that the Court's reversal of the Circuit Court's preliminary injunction was based upon the representations in the Affidavits of Natasha Walker of the State Board in the record of the case or the extra-record representations of Assistant Attorney General Trento at oral argument regarding the issues that the State Board claimed that it may have with respect to changing the Democratic

Primary Election Ballot, those representations will be moot in light of the fact that the State Board, as matter of statutory mandate, will have to reprint every ballot for the June 26, 2018, Democratic Party Primary Election as a consequence of Mr. Kamenetz's death in the event that Ms. Ervin designates a new candidate for Governor or elects to be substituted for Mr. Kamenetz as the candidate for Governor and designates a new candidate for Lieutenant Governor.

7. Less than 30 days has passed from the entry of this Court's Mandate. Thus, the Court has plenary power to recall and revise its Mandate pursuant to Maryland Code, Courts & Judicial Proceedings §6-408. Further this Court has inherent power to recall its Mandate. *See Harper v. Farmers' & Merchants' National Bank of Cambridge*, 155 Md. 693, 142 A. 590 (1928); *see also Harrison v. Harrison*, 109 Md. App. 652, 675 A.2d 1003 (1996), *cert. denied*, 343 Md. 564, 683 A.2d 177 (1996). The Circuit Court for Anne Arundel County has not acted yet upon this Court's Mandate. Should the Court recall its Mandate, a Motion for Reconsideration pursuant to Maryland Rule 8-605 would be timely.

For the reasons stated above, this Court should recall its Mandate and reconsider its Per Curiam Order if the ballots for the Democratic Primary are altered as a consequence of Mr. Kamenetz's death.

/s/

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